

ESTTA Tracking number: **ESTTA140642**

Filing date: **05/15/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Frito-Lay North America, Inc.
Granted to Date of previous extension	05/16/2007
Address	7701 Legacy Drive Plano, TX 75024 UNITED STATES
Attorney information	Joseph J. Ferretti Frito-Lay North America, Inc. 7701 Legacy Drive, Mail Stop 3A-421 Plano, TX 75024 UNITED STATES trademarks@fritolay.com Phone:972-334-3403

Applicant Information

Application No	78909862	Publication date	01/16/2007
Opposition Filing Date	05/15/2007	Opposition Period Ends	05/16/2007
Applicant	Comestibles Aldor, S.A. Calle 15 No. 29-69 Acopi Yumbo, COLOMBIA		

Goods/Services Affected by Opposition

Class 030. All goods and sevicees in the class are opposed, namely: confectionery, namely candy
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1462123	Application Date	08/18/1986
Registration Date	10/20/1987	Foreign Priority Date	NONE
Word Mark	NONE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 030. First use: First Use: 1986/05/20 First Use In Commerce: 1986/05/20 CHEESE-FLAVORED CORN-BASED SNACK FOOD

U.S. Registration No.	1439396	Application Date	08/18/1986
Registration Date	05/12/1987	Foreign Priority Date	NONE
Word Mark	CHESTER CHEETAH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1986/05/20 First Use In Commerce: 1986/05/20 CHEESE-FLAVORED CORN-BASED SNACK FOOD		

U.S. Registration No.	1529788	Application Date	12/18/1987
Registration Date	03/14/1989	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1987/02/25 First Use In Commerce: 1987/02/25 CLOTHING, NAMELY SHORTS, SHIRTS, FLEECE TOPS AND BOTTOMS, AND HATS		

U.S. Registration No.	1599741	Application Date	06/05/1989
Registration Date	06/05/1990	Foreign Priority Date	NONE
Word Mark	CHESTER'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1989/03/13 First Use In Commerce: 1989/03/13 MICROWAVE UNPOPPED POPCORN		

U.S. Registration No.	1945450	Application Date	12/02/1994
Registration Date	01/02/1996	Foreign Priority Date	NONE
Word Mark	CHESTER'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1989/12/01 First Use In Commerce: 1989/12/01		

	popped popcorn		
U.S. Registration No.	2485021	Application Date	07/26/2000
Registration Date	09/04/2001	Foreign Priority Date	NONE
Word Mark	CHESTER CHEETAH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1989/01/00 First Use In Commerce: 1989/01/00 CLOTHING, NAMELY, SHORTS, SHIRTS, FLEECE TOPS AND BOTTOMS AND HATS Class 030. First use: First Use: 1989/01/00 First Use In Commerce: 1989/01/00 CORN-BASED SNACK FOODS, NAMELY, PUFFED CORN-BASED SNACKS		
U.S. Registration No.	2719801	Application Date	12/29/2000
Registration Date	05/27/2003	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/03/05 First Use In Commerce: 2001/03/05 CHEESE FLAVORED PUFFED CORN SNACKS		
U.S. Registration No.	2681735	Application Date	02/16/2001
Registration Date	01/28/2003	Foreign Priority Date	NONE
Word Mark	CHESTER'S SPOT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/03/25 First Use In Commerce: 2001/03/25 CHEESE FLAVORED PUFFED CORN SNACKS Class 041. First use: First Use: 2001/07/15 First Use In Commerce: 2001/07/15 ENTERTAINMENT SERVICES, NAMELY, PROVIDING ON-LINE COMPUTER GAMES AND CONTESTS VIA A WEB SITE		
U.S. Registration No.	2683228	Application Date	03/22/2002
Registration Date	02/04/2003	Foreign Priority Date	NONE
Word Mark	CHEETOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/02/25 First Use In Commerce: 2001/02/25		

	CORN-BASED SNACK FOODS, NAMELY, PUFFED CORN SNACKS		
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U.S. Registration No.	2719306	Application Date	08/16/2002
Registration Date	05/27/2003	Foreign Priority Date	NONE
Word Mark	CHESTER'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1995/01/01 First Use In Commerce: 1995/01/01 CORN-BASED SNACK FOODS, NAMELY, PUFFED CORN SNACKS		

U.S. Registration No.	2840688	Application Date	12/29/2000
Registration Date	05/11/2004	Foreign Priority Date	NONE
Word Mark	CHEETOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2001/11/01 First Use In Commerce: 2001/11/01 CHEESE FLAVORED PUFFED CORN SNACKS		

U.S. Registration No.	2983217	Application Date	05/17/2004
Registration Date	08/09/2005	Foreign Priority Date	NONE
Word Mark	CHESTER CHEETAH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1999/01/01 First Use In Commerce: 1999/01/01 CRACKERS		

Attachments	73615637#TMSN.gif (1 page)(bytes) 73701799#TMSN.gif (1 page)(bytes) 76097372#TMSN.gif (1 page)(bytes) 76187671#TMSN.gif (1 page)(bytes) 76211604#TMSN.gif (1 page)(bytes) 76386044#TMSN.gif (1 page)(bytes) 76441059#TMSN.gif (1 page)(bytes) 76188184#TMSN.gif (1 page)(bytes) 78419963#TMSN.jpeg (1 page)(bytes) KOOL CAT NOTICE OF OPP.pdf (7 pages)(245634 bytes)
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Signature	/Joseph J. Ferretti/
Name	Joseph J. Ferretti
Date	05/15/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 78/909862, KOOL CAT AND DESIGN
Published in the *Official Gazette* on January 16, 2007

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FRITO-LAY NORTH AMERICA, INC.	:	
	:	
Opposer,	:	
	:	Opposition No.
vs.	:	
	:	
COMESTIBLES ALDOR, S.A.,	:	
	:	
Applicant.	:	
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NOTICE OF OPPOSITION

Opposer, Frito-Lay North America, Inc., a Delaware corporation, having a place of business at 7701 Legacy Drive, Plano, TX 75024, believes it will be damaged by the issuance of a registration to Applicant, Comestibles Aldor, S.A. (hereinafter "Applicant" or "Comestibles Aldor"), a corporation organized and existing under the laws of Columbia, with a place of business at Calle 15 No. 29-69 Acopi, Yumbo, Columbia, upon its Application Serial No. 78/909,862 for the mark KOOL CAT AND DESIGN in International Class 30 for "confectionery, namely candy," and having previously been granted extensions of time to oppose, hereby opposes same.

The grounds for opposition are as follows:

1. Opposer, Frito-Lay North America, Inc. through its predecessors in interest and title, and through its related companies, divisions and/or licensees (hereinafter individually and/or collectively referred to as "Opposer"), has been engaged in the manufacture and sale of snack foods for over fifty years and is now one of the largest manufacturers of snack foods in the United States.

2. Opposer's snack foods are marketed and sold in tremendous quantities on a nationwide basis, supported by tens of millions of dollars of advertising and promotion each year. Opposer's food products are sold in almost every supermarket in the United States as well as in numerous convenience stores, vending machines, mass merchandise stores, schools and other outlets.

3. Opposer has used the marks CHESTER CHEETAH, CHESTER CHEETAH DESIGN, CHESTER'S, CHEETOS AND DESIGN and variants thereof on and in connection with snack foods and related products, including, but not limited to, corn based snack products since at least as early as 1986. Since a date long prior to the filing date of the above identified application and continuing through the present, CHESTER CHEETAH has been identified with Opposer and has appeared on a tremendous amount of product packaging, advertising, national television commercials, in-store display racks, trucks, signage, point-of purchase material, etc.

4. Opposer has, by virtue of incredibly extensive usage, advertising and promotion built up a very high level of consumer and trade recognition symbolized by its mark CHESTER CHEETAH. Due to extensive public exposure to, and awareness by, consumers and the trade, the CHESTER CHEETAH mark is famous and has acquired and now possesses an extremely favorable reputation and distinctiveness with an invaluable amount of goodwill, solely signifying Opposer as the source food products of high quality.

5. Opposer's sales of CHESTER CHEETAH products have exceeded hundreds of millions of dollars each year, over the past several years alone. By virtue of its tremendous sales success, and extensive and popular advertising and promotional efforts, the CHESTER CHEETAH trademark has long enjoyed strong brand recognition and distinctiveness which has resulted in a highly favorable reputation and goodwill among the trade and consumers as identifying high quality snack food products and sauces or dips manufactured and exclusively sold by Opposer.

6. Opposer has adopted and has used variations of CHESTER CHEETAH as a mark to identify other related snack food products manufactured and sold exclusively by Opposer. By virtue of similarly extensive sales, advertising and promotion as described hereinabove, these variants have also acquired a favorable reputation among consumers and the trade and has created a multiplicity and/or family of marks incorporating the designation CHESTER CHEETAH which further reinforces the distinctiveness, fame and favorable reputation enjoyed by Opposer, its mark CHESTER CHEETAH and its various snack food products, many of which are salted and seasoned in various ways.

7. Indeed, the tremendous commercial acceptance and success of many of the Opposer's snack foods is due in large measure to its innovative and continuous introduction of a variety of unique and special seasonings and flavorings for its snack chips and snack foods. Since first introducing CHESTER CHEETAH cheese flavored puffed corn snacks, Opposer has expanded its CHESTER CHEETAH product line to include different styles and flavors.

8. Opposer is also the owner of valid and subsisting U.S. registrations and applications for the mark CHESTER CHEETAH and variants, including, but not limited to, the following:

MARK	REG./SER. NUMBER.	REG/FILE DATE	GOODS
CHESTER CHEETAH DESIGN	1,462,123	10/20/87	Cheese flavored corn based snack food
CHESTER CHEETAH	1,439,396	5/12/87	Cheese flavored corn based snack foods
CHESTER CHEETAH DESIGN	1,529,788	3/14/89	Clothing, namely shorts, shirts, fleece tops and bottoms, and hats
CHESTER'S	1,599,741	6/5/90	Microwave unpopped popcorn
CHESTER'S	1,945,450	1/2/96	Popped popcorn

CHESTER CHEETAH AND DESIGN	2,485,021	9/4/01	Clothing, namely shorts, shirts, fleece tops and bottoms and hats; and Corn based snack foods, namely puffed corn based snacks
CHESTER CHEETAH DESIGN	2,719,801	5/27/03	Cheese flavored puffed corn snacks
CHESTER'S SPOT	2,681,735	1/28/03	Cheese flavored puffed corn snacks; entertainment services, namely, providing on-line computer games and contests via a web site
CHEETOS AND DESIGN	2, 683,228	2/4/03	Corn based snack food, namely puffed corn snacks
CHESTER'S	2,719,306	5/27/03	Corn-based snack, namely, puffed corn snacks
CHEETOS AND DESIGN	2,840,688	5/11/04	Cheese flavored puffed corn snacks
CHESTER CHEETAH AND DESIGN	2,983,217	8/9/05	Crackers

The above registrations are valid and in force, and Registration No. 1,462,123, No. 1,439,396, No. 1,529,788, No. 1,599,741, and No. 1,945,560 are incontestable. Hereinafter the above marks, including those registered and/or used in commerce by Opposer, are referred to as the "CHESTER Marks" which are inherently distinctive.

10. As a result of the extensive and continuous advertising, sale, use and promotion of products bearing Opposer's CHESTER Marks for over 20 years and their high quality, said marks have acquired substantial public and consumer recognition throughout the United States, enjoy valuable goodwill, have become famous and have become assets of considerable value to Opposer.

11. On information and belief, on June 16, 2006, Applicant filed Application Serial No. 78/909,862 to register KOOL CAT AND DESIGN for "confectionery, namely candy" in International Class 30, based on an intent to use the mark in commerce..

12. Opposer has priority over Applicant because its use and/or registration dates precede the Applicant's filing date of Applicant's KOOL CAT AND DESIGN mark.

13. Registration of Applicant's alleged mark which is the subject of the application-in-opposition is barred by the provisions of Section 2(d) of the Trademark Act of 1946 because the said mark consists of or comprises a mark which so resembles a mark previously registered in the United States Patent and Trademark Office and/or used in the United States by Opposer and not abandoned, as to be likely, when used in connection with the alleged goods of the Applicant to cause confusion, mistake or deception.

14. Applicant's alleged KOOL CAT AND DESIGN mark and Opposer's CHESTER Marks are similar in their overall commercial impression, appearance, and sound. These similarities are further enhanced in view of Opposer's prior use and registration of various CHESTER Marks such that on information and belief, consumers are likely to perceive Applicant's claimed mark as a similar or related play off of Opposer's marks.

15. On information and belief, the goods to which Applicant's alleged KOOL CAT AND DESIGN trademark will be applied and the goods upon which Opposer's CHESTER Marks are registered and/or extensively used are or are likely to be similar, competitive, related or complementary products. On information and belief, they appeal or will appeal to the same class of purchasers, and are goods of a type which are often sold through the same channels of trade.

16. Accordingly, Applicant's alleged KOOL CAT AND DESIGN mark, so resembles Opposer's previously used and registered marks CHESTER Marks, as to be likely to cause confusion, to cause mistake or to deceive. The likelihood of confusion, mistake or deception that would also arise from concurrent use and registration of the applied for mark with Opposer's use and registration of its CHESTER Marks is that (a) persons are likely to believe that Applicant's products have their source in Opposer, or (b) that Applicant and its goods are in some way legitimately connected or affiliated with, sponsored, approved, endorsed or licensed by Opposer when, in fact, they are not.

Accordingly, registration of Applicant's KOOL CAT AND DESIGN mark is barred by the provisions of Section 2(d) of the trademark Act of 1946, 15 U.S.C. § 1052(d).

17. Applicant's alleged mark which is the subject of the application-in-opposition so resembles Opposer's previously used and registered CHESTER Marks, as to be likely to constitute a false representation that Applicant's goods are approved or sponsored by Opposer or that Applicant's mark which is the subject of the application-in-opposition is a version of Opposer's marks and/or products/services, thereby deceiving the public, causing confusion or mistake and causing damage to Opposer within the meaning of 15 U.S.C. §1063.

18. Further, Opposer's inherently distinctive CHESTER Marks became famous long prior to the filing date of Applicant's application-in-opposition and/or any claimed date of first use by Applicant of the KOOL CAT AND DESIGN mark which is the subject of U.S. Application Serial No. 78/909,862. Registration and use of Applicant's alleged KOOL CAT AND DESIGN mark would likely dilute the distinctiveness of Opposer's famous and highly distinctive CHESTER Marks in violation of 15 U.S.C. § 1125(c). Accordingly, Applicant's alleged mark is not entitled to registration under 15 U.S.C. § 1052(f) and Section 13 of the Lanham Act, 15 U.S.C. § 1063.

19. Opposer will be damaged by the registration sought by Applicant within the meaning of 15 U.S.C. §1063 because such registration would support and assist Applicant in the confusing, misleading and/or dilutive use of Applicant's alleged KOOL CAT AND DESIGN mark, and would give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

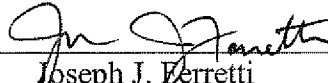
20. In view of the foregoing, issuance of a registration to Applicant for its claimed KOOL CAT AND DESIGN mark which is the subject of Application Serial No. 78/909,862 would, therefore, be damaging to Opposer's common law marks and federal registrations within the meaning of Section 13 of the Lanham Act, 15 U.S.C. §1063.

WHEREFORE, Opposer prays that this opposition be sustained and that registration be denied to Applicant on its Application Serial No. 78/909,862.

Respectfully submitted,

FRITO-LAY NORTH AMERICA, INC.

Date: 5.15.07

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